

AO 120 (Rev. 08/10)

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| <b>TO:</b><br><b>Mail Stop 8</b><br><b>Director of the U.S. Patent and Trademark Office</b><br><b>P.O. Box 1450</b><br><b>Alexandria, VA 22313-1450</b> | <b>REPORT ON THE</b><br><b>FILING OR DETERMINATION OF AN</b><br><b>ACTION REGARDING A PATENT OR</b><br><b>TRADEMARK</b> |
|---|---|

In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Southern District of Florida on the following

☒ Trademarks or ☒ Patents. ( ☐ the patent action involves 35 U.S.C. § 292.);

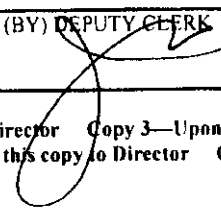
|                                      |                                |  |
|--------------------------------------|--------------------------------|--|
| DOCKET NO.<br><b>10-14302-CV-KMM</b> | DATE FILED<br><b>1/27/2011</b> | U.S. DISTRICT COURT<br><b>Southern District of Florida</b> |
| PLAINTIFF<br><br><b>Ehp4t, Inc</b>   |                                | DEFENDANT<br><br><b>Adventure Air, Inc.</b>                |
| PATENT OR TRADEMARK NO.              | DATE OF PATENT OR TRADEMARK    | HOLDER OF PATENT OR TRADEMARK                              |
| <b>1 6,328,260 B1</b>                | <b>12/11/2011</b>              | <b>Ning Spar Modification Kit</b>                          |
| 2                                    |                                |  |
| 3                                    |                                |  |
| 4                                    |                                |  |
| 5                                    |                                |  |

In the above—entitled case, the following patent(s)/ trademark(s) have been included:

|                         |   |                               |
|-------------------------|---|-------------------------------|
| DATE INCLUDED           | INCLUDED BY<br><input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading |                               |
| PATENT OR TRADEMARK NO. | DATE OF PATENT OR TRADEMARK   | HOLDER OF PATENT OR TRADEMARK |
| 1                       |   |                               |
| 2                       |   |                               |
| 3                       |   |                               |
| 4                       |   |                               |
| 5                       |   |                               |

In the above—entitled case, the following decision has been rendered or judgement issued:

|   |
|---|
| DECISION/JUDGEMENT<br><b>Dismissed without Prejudice. Case is Close.</b><br><b>1/27/2011 DE # 7</b> |
|---|

|                                    |  |                         |
|------------------------------------|--|-------------------------|
| CLERK<br><b>Steven M. Larimore</b> | (BY) DEPUTY CLERK<br> | DATE<br><b>2/1/2011</b> |
|------------------------------------|--|-------------------------|

Copy 1—Upon initiation of action, mail this copy to Director    Copy 3—Upon termination of action, mail this copy to Director  
Copy 2—Upon filing document adding patent(s), mail this copy to Director    Copy 4—Case file copy

- (3) Deeming this to be an “exceptional” case within the meaning of 35 U.S.C. § 285, entitling Plaintiff Enpat to an award of its reasonable attorney fees, expenses and costs in this action;
- (4) Awarding compensatory damages based on reasonable royalties, lost profits, reduced profits, prejudgment interest, and/or for any other available damages based on any form of recoverable economic injury sustained by Plaintiff Enpat as a result of Defendant Adventure Air, Inc.’s infringement pursuant to 35 U.S.C. §284;
- (5) Awarding permanent injunctive relief enjoining the use of any instrumentality that infringes any of the claims of the ‘260 patent pursuant to 35 U.S.C. §283;
- (6) Awarding Plaintiff Enpat treble damages pursuant to 35 U.S.C. §284;
- (7) Awarding Plaintiff Enpat costs and attorneys’ fees pursuant to 35 U.S.C. §285; and
- (8) Awarding Plaintiff Enpat such other and further relief as this Court deems just and proper.

Respectfully submitted.

DATED this 8th day of November, 2010.

BY: s/ Kelly G. Swartz

Kelly G. Swartz, **Trial Counsel**

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Robert A. Lynch

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Attorneys for Plaintiff Enpat, Inc.

**DEMAND FOR JURY TRIAL**

Plaintiff, Enpat, Inc. hereby demands a trial by jury on all issues so triable.

DATED this 8th day of November, 2010.

BY: s/ Kelly G. Swartz  
Kelly G. Swartz, **Trial Counsel**  
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Attorneys for Plaintiff Enpat, Inc.

JS 44 (Rev. 2/08)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.) **NOTICE: Attorneys MUST Indicate All Re-filed Cases Below.**

|   |  |
|---|--|
| <b>I. (a) PLAINTIFFS</b><br>Enpat, Inc., a Florida Corporation<br><br><b>(b) County of Residence of First Listed Plaintiff</b> <u>Brevard</u><br>(EXCEPT IN U.S. PLAINTIFF CASES)<br><br><b>(c) Attorney's (Firm Name, Address, and Telephone Number)</b><br>Kelly G. Swartz; Hayworth, Chaney & Thomas, P.A.; 202 N. Harbor<br>City Blvd., Ste. 300; Melbourne, FL 32935; (321) 253-3300 | <b>DEFENDANTS</b><br>Adventure Air, Inc.<br><br>County of Residence of First Listed Defendant _____<br>(IN U.S. PLAINTIFF CASES ONLY)<br><br>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT<br>LAND INVOLVED.<br><br>Attorneys (If Known) _____ |
|---|--|

(d) Check County Where Action Arose: ☐ MIAMI-DADE ☐ MONROE ☐ BROWARD ☐ PALM BEACH ☐ MARTIN ☐ ST. LUCIE ☐ INDIAN RIVER ☒ OKEECHOBEE HIGHLANDS

| <b>II. BASIS OF JURISDICTION</b> (Place an "X" in One Box Only)<br><br><input type="checkbox"/> 1 U.S. Government Plaintiff<br><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)<br><br><input type="checkbox"/> 2 U.S. Government Defendant<br><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III) | <b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> (Place an "X" in One Box for Plaintiff and One Box for Defendant)<br><table style="width: 100%;"> <tr> <th></th> <th>PTF</th> <th>DEF</th> <th></th> <th>PTF</th> <th>DEF</th> </tr> <tr> <td>Citizen of This State</td> <td><input type="checkbox"/> 1</td> <td><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in This State</td> <td><input type="checkbox"/> 4</td> <td><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table> |                            | PTF   | DEF                        |                            | PTF | DEF | Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 | Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 | Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
|---|---|----------------------------|---|----------------------------|----------------------------|-----|-----|-----------------------|----------------------------|----------------------------|---|----------------------------|----------------------------|--------------------------|----------------------------|----------------------------|---|----------------------------|----------------------------|---|----------------------------|----------------------------|----------------|----------------------------|----------------------------|
|   | PTF   | DEF                        |   | PTF                        | DEF                        |     |     |                       |                            |                            |   |                            |                            |                          |                            |                            |   |                            |                            |   |                            |                            |                |                            |                            |
| Citizen of This State   | <input type="checkbox"/> 1  | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |     |     |                       |                            |                            |   |                            |                            |                          |                            |                            |   |                            |                            |   |                            |                            |                |                            |                            |
| Citizen of Another State  | <input type="checkbox"/> 2  | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |     |     |                       |                            |                            |   |                            |                            |                          |                            |                            |   |                            |                            |   |                            |                            |                |                            |                            |
| Citizen or Subject of a Foreign Country   | <input type="checkbox"/> 3  | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |     |     |                       |                            |                            |   |                            |                            |                          |                            |                            |   |                            |                            |   |                            |                            |                |                            |                            |

| IV. NATURE OF SUIT (Place an "X" in One Box Only)  |  |  |   |  |  |
|--|--|--|---|--|--|
| CONTRACT   | TORTS  | FORFEITURE/PENALTY   | BANKRUPTCY  | OTHER STATUTES   | REAL PROPERTY  |
| <input type="checkbox"/> 110 Insurance<br><input type="checkbox"/> 120 Marine<br><input type="checkbox"/> 130 Miller Act<br><input type="checkbox"/> 140 Negotiable Instrument<br><input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment<br><input type="checkbox"/> 151 Medicare Act<br><input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)<br><input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits<br><input type="checkbox"/> 160 Stockholders' Suits<br><input type="checkbox"/> 190 Other Contract<br><input type="checkbox"/> 195 Contract Product Liability<br><input type="checkbox"/> 196 Franchise | <b>PERSONAL INJURY</b><br><input type="checkbox"/> 310 Airplane<br><input type="checkbox"/> 315 Airplane Product Liability<br><input type="checkbox"/> 320 Assault, Libel & Slander<br><input type="checkbox"/> 330 Federal Employers' Liability<br><input type="checkbox"/> 340 Marine<br><input type="checkbox"/> 345 Marine Product Liability<br><input type="checkbox"/> 350 Motor Vehicle<br><input type="checkbox"/> 355 Motor Vehicle Product Liability<br><input type="checkbox"/> 360 Other Personal Injury | <input type="checkbox"/> 610 Agriculture<br><input type="checkbox"/> 620 Other Food & Drug<br><input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881<br><input type="checkbox"/> 630 Liquor Laws<br><input type="checkbox"/> 640 R.R. & Truck<br><input type="checkbox"/> 650 Airline Regs.<br><input type="checkbox"/> 660 Occupational Safety/Health<br><input type="checkbox"/> 690 Other | <input type="checkbox"/> 422 Appeal 28 USC 158<br><input type="checkbox"/> 423 Withdrawal 28 USC 157<br><br><b>PROPERTY RIGHTS</b><br><input type="checkbox"/> 820 Copyrights<br><input checked="" type="checkbox"/> 830 Patent<br><input type="checkbox"/> 840 Trademark<br><br><b>LABOR</b><br><input type="checkbox"/> 710 Fair Labor Standards Act<br><input type="checkbox"/> 720 Labor/Mgmt. Relations<br><input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act<br><input type="checkbox"/> 740 Railway Labor Act<br><input type="checkbox"/> 790 Other Labor Litigation<br><input type="checkbox"/> 791 Empl. Ret. Inc. Security Act<br><br><b>IMMIGRATION</b><br><input type="checkbox"/> 462 Naturalization Application<br><input type="checkbox"/> 463 Habeas Corpus-Alien Detainee<br><input type="checkbox"/> 465 Other Immigration Actions | <input type="checkbox"/> 400 State Reapportionment<br><input type="checkbox"/> 410 Antitrust<br><input type="checkbox"/> 430 Banks and Banking<br><input type="checkbox"/> 450 Commerce<br><input type="checkbox"/> 460 Deportation<br><input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations<br><input type="checkbox"/> 480 Consumer Credit<br><input type="checkbox"/> 490 Cable/Sat TV<br><input type="checkbox"/> 810 Selective Service<br><input type="checkbox"/> 850 Securities/Commodities/Exchange<br><input type="checkbox"/> 875 Customer Challenge 12 USC 3410<br><input type="checkbox"/> 890 Other Statutory Actions<br><input type="checkbox"/> 891 Agricultural Acts<br><input type="checkbox"/> 892 Economic Stabilization Act<br><input type="checkbox"/> 893 Environmental Matters<br><input type="checkbox"/> 894 Energy Allocation Act<br><input type="checkbox"/> 895 Freedom of Information Act<br><input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice<br><br><input type="checkbox"/> 950 Constitutionality of State Statutes | <input type="checkbox"/> 210 Land Condemnation<br><input type="checkbox"/> 220 Foreclosure<br><input type="checkbox"/> 230 Rent Lease & Ejectment<br><input type="checkbox"/> 240 Torts to Land<br><input type="checkbox"/> 245 Tort Product Liability<br><input type="checkbox"/> 290 All Other Real Property |
|  | <b>PRISONER PETITIONS</b><br><input type="checkbox"/> 510 Motions to Vacate Sentence<br><input type="checkbox"/> 530 General<br><input type="checkbox"/> 535 Death Penalty<br><input type="checkbox"/> 540 Mandamus & Other<br><input type="checkbox"/> 550 Civil Rights<br><input type="checkbox"/> 555 Prison Condition  |  |   |  |  |

**V. ORIGIN** (Place an "X" in One Box Only)  
☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Re-filed- (see VI below) ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. RELATED/RE-FILED CASE(S).** a) Re-filed Case ☐ YES ☒ NO b) Related Cases ☒ YES ☐ NO  
 (See instructions second page): JUDGE See Attached DOCKET NUMBER See Attached

**VII. CAUSE OF ACTION** Cite the U.S. Civil Statute under which you are filing and Write a Brief Statement of Cause (Do not cite jurisdictional statutes unless diversity):  
 35 USC 271; patent infringement  
 LENGTH OF TRIAL via 4 days estimated (for both sides to try entire case)

**VIII. REQUESTED IN COMPLAINT:** ☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** CHECK YES only if demanded in complaint: **JURY DEMAND:** ☒ Yes ☐ No

ABOVE INFORMATION IS TRUE & CORRECT TO THE BEST OF MY KNOWLEDGE

SIGNATURE OF ATTORNEY OF RECORD

DATE

November 8, 2010

FOR OFFICE USE ONLY

AMOUNT

RECEIPT #

IFP

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

|                        |   |                                |
|------------------------|---|--------------------------------|
| ENPAT, INC.,           | ) |                                |
| a Florida Corporation, | ) | <b>Case No.:</b>               |
| Plaintiff,             | ) |                                |
|                        | ) | <b>PLAINTIFF ENPAT, INC.'s</b> |
| v.                     | ) | <b>COMPLAINT AND</b>           |
|                        | ) | <b>DEMAND FOR JURY TRIAL</b>   |
| Adventure Air, Inc.,   | ) |                                |
| a Florida Corporation, | ) | <b>INJUNCTIVE RELIEF</b>       |
| Defendant.             | ) | <b>SOUGHT</b>                  |
|                        | ) |                                |
|                        | ) |                                |
|                        | ) |                                |

Plaintiff, Enpat, Inc. brings this action for injunctive relief and for the recovery of damages and attorney's fees and costs arising from infringement of United States Patent No. 6,328,260 ("the '260 patent") against Defendant Adventure Air, Inc., and alleges as grounds therefore the following:

**SUBJECT MATTER JURISDICTION**

1. The claims alleged below are brought under the Patent Laws of the United States, 35 U.S.C. §1 *et seq.* This Court has

original and exclusive jurisdiction over these claims pursuant to 28 U.S.C. §1338(a).

### **PARTIES**

2. Plaintiff Enpat, Inc. ("Enpat") is a corporation duly organized and existing under the laws of the State of Florida, with its corporate headquarters and principal place of business at 610 Baytree Drive, Melbourne, FL 32940.

3. Defendant Adventure Air, Inc. is, on information and belief, a Florida corporation with a principle place of business at 1614 Assembly Point Drive, Sebring, Florida.

### **PERSONAL JURISDICTION AND VENUE**

4. The Court has personal jurisdiction over Defendant Adventure Air, Inc. and subject matter jurisdiction pursuant to 28 U.S.C. § 1338(a).

5. Venue is proper in the Southern District of Florida pursuant to 28 U.S.C. §§1391(b).

### **GENERAL ALLEGATIONS**

6. Lake Amphibious Seaplanes (“Lake Aircraft”) are single engine boat-hulled pusher-propeller amphibian aircraft.

7. On or around October 6, 1999, the Federal Aviation Administration (“FAA”) published a notice of proposed rulemaking (“NPRM”) regarding Lake Aircraft. *See* 64 FR 54234.

8. The NPRM would have required every owner of a Lake Aircraft to remove the wings from the aircraft, inspect for cracks in the wing spar caps and doublers, and repair any cracks as necessary.

9. The anticipated costs for compliance with the NPRM would have been approximately \$40,000.00 or more per airplane.

10. In response to the NPRM, non-party Aerofab, Inc. (“Aerofab”) developed a wing spar modification kit that could be installed on Lake Aircraft to address the problem identified in the NPRM while avoiding the cost, expense, and risk associated with removing the aircraft wings.

11. Aerofab sought and obtained FAA approval of the wing spar modification kit.

12. Aerofab developed and obtained approval of the wing spar modification kit at its own significant expense.

13. On or around June 20, 2000, the FAA issued an Airworthiness Directive (AD) requiring owners of all affected aircraft to install the wing spar modification kit developed by Aerofab.

14. The inventors of the wing spar modification kit filed for patent protection under the Patent Laws of the United States on October 25, 2000.

15. Upon information and belief, non-party JCM Aerodesign Limited ("JCM") manufactured or distributed a wing spar modification kit ("Knock-Off Kit") that was a copy of the Aerofab wing spar modification kit.

16. JCM copied Aerofab's approved wing spar modification kit.

17. Upon information and belief, JCM obtained FAA approval to use the Knock-Off Kit as an alternative method of compliance with the AD.

18. On December 11, 2001, the '260 patent, entitled "Wing Spar Modification Kit" was granted to inventors Jack M. Tarbox and Philip J. Baker, the inventors of the Aerofab wing spar modification kit. A copy of the '260 patent is attached as Exhibit "A", and incorporated herein by reference.

19. In general, the claims of the '260 patent relate to a kit to be installed on a Lake Aircraft to reduce or prevent cracking in the wing spars.

20. Subsequent to issuance of the '260 patent, all right, title and interest in and to the '260 patent were assigned to Revo, Inc., a New Hampshire corporation.

21. Revo, Inc. then assigned all right, title and interest in and to the '260 patent to Plaintiff Enpat, which is now the owner of all right, title and interest in and to the '260 patent including the right to recover for past infringement.

22. Plaintiff Enpat is an active licensor and enforcer of the '260 patent, having granted licenses thereto.

23. On or around, April 28, 2001 a Knock-Off Kit was installed on a LA4/200 aircraft which is now owned by Defendant Adventure Air, Inc.. *See* Exhibit B.

24. Upon information and belief, Defendant Adventure Air, Inc. uses, in the Southern District of Florida, one or more airplanes that have Knock-Off Kits installed.

25. The Knock-Off Kit infringes one or more claims of the '260 patent.

26. The '260 patent has completed a reexamination proceeding with each and every claim remaining valid, enforceable, and unchanged.

27. Defendant Adventure Air, Inc.'s use of the aircraft is a direct violation of 35 U.S.C. § 271 because, upon information and belief, it contains the Knock-Off Kit.

28. Defendant Adventure Air, Inc. is acting without authorization or license from Plaintiff Enpat or any prior owner of the patent.

29. Defendant Adventure Air, Inc.'s infringing activities have caused Plaintiff Enpat a compensable injury and are likely to

cause irreparable injury to Plaintiff Enpat unless Defendant Adventure Air, Inc.'s infringement is enjoined.

30. Defendant Adventure Air, Inc. is willfully infringing the '260 patent.

31. Pursuant to 35 U.S.C. § 282, the '260 patent enjoys a presumption of validity.

**COUNT ONE**

**PATENT INFRINGEMENT OF U.S. PATENT NO. 6,328,260**

**UNDER 35 U.S.C. §271(a)**

32. Paragraphs one (1) through thirty-one (31) are re-alleged and incorporated as if fully set forth herein.

33. Defendant Adventure Air, Inc. has used, and will continue to use, in this judicial district and elsewhere throughout the United States, the Knock-Off Kit that infringes one or more claims of the '260 patent.

34. Defendant Adventure Air, Inc.'s Knock-Off Kit infringes one or more of the claims of the '260 patent.

35. By using the Knock-Off Kit, Defendant Adventure Air, Inc. has directly infringed, and will continue to directly infringe, one or more claims of the '260 patent under 35 U.S.C. §271(a).

36. Defendant Adventure Air, Inc.'s infringement of the '260 patent has been and continues to be willful and deliberate.

37. As a direct and proximate consequence of the acts and practices of Defendant Adventure Air, Inc., Plaintiff Enpat has been, is being, and will continue to be injured in its business and property rights, and has suffered, is suffering, and will continue to suffer injury and damages for which it is entitled to relief under 35 U.S.C. §284.

WHEREFORE, Plaintiff Enpat prays for the entry of a judgment from this Court:

- (1) Declaring, pursuant to 35 U.S.C. § 271, that Defendant Adventure Air, Inc. has directly infringed one or more of the claims of the '260 patent;
- (2) Declaring that Defendant Adventure Air, Inc. has willfully infringed one or more claims of the '260 patent;